

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PATRICK STOLLAR,	:	
	:	
Plaintiff,	:	Civil Action No. 21-1515
	:	
v.	:	Magistrate Judge Dodge
	:	
JOHN E. WETZEL & PA DOC.,	:	
	:	
	:	
Defendants.	:	Electronically Filed.

DEFENDANTS’ RESPONSE TO PLAINTIFF’S MOTION TO TRANSFER

AND NOW, come the Defendants, through their counsel, Yana L. Warshafsky, Assistant Counsel to the Department of Corrections, and respectfully submit the following Response to Plaintiff’s Motion to Transfer:

1. Plaintiff is an individual presently sentenced to death and incarcerated by the Commonwealth of Pennsylvania, Department of Corrections at the State Correctional Institution at Phoenix (“SCI-Phoenix”). He filed a civil rights complaint, which he later amended, pursuant to 42 U.S.C. § 1983 arising out of his long-term confinement in the Capital Case Unit (“CCU”) and naming as Defendants former-Secretary of Corrections John Wetzel and the Department of Corrections. (ECF No. 13, *generally*).

2. Plaintiff brings three discrete claims based upon his long-term confinement in the CCU. First, Plaintiff alleges that his confinement violated the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act (“RA”). (*Id.*, at ¶¶ 27-30). Second, Plaintiff avers that his confinement violated the Eighth Amendment prohibition against cruel and unusual punishment. (*Id.*, at ¶¶ 31-37). Finally, Plaintiff contends that his confinement violated the Fourteenth Amendment. (*Id.*, at ¶¶ 38-40). As relief, Plaintiff seeks declaratory and monetary relief. (*Id.*, at p. 8).

3. In response to the Amended Complaint, Defendants submitted a Motion to Transfer. (ECF No. 16).

4. Before the Motion was decided, Plaintiff filed a notice of voluntary dismissal of this action, and as a result, the Court dismissed Defendants' Motion to Transfer as moot, and the Clerk of Court closed this case. (ECF Nos. 18-20).

5. In May 2022, nearly 5 months after voluntarily dismissing the action, Plaintiff filed a motion requesting to reopen the case. (ECF No. 21).

6. Following extensive briefing, this Court granted Plaintiff's Motion, and the case was reopened on September 26, 2022. (ECF No. 30).

7. In the Order granting Plaintiff's Motion to Reopen the case, the Court provided a deadline by which the Defendants could file a Motion to Transfer, should Defendants wish to do so. (ECF No. 30).

8. Defendants intentionally did not file a Motion to Transfer, and this Court issued an Order directing that a response to the operative complaint be filed by November 8, 2022. (ECF No. 35).

9. Defendants submitted a timely Motion to Dismiss that is currently pending before this Court. (ECF No. 39).

10. On January 10, 2023, Plaintiff filed a document entitled "Joint Motion to Transfer Case," wherein Plaintiff requests that he be permitted to join Defendants' previously filed Motion to Transfer. (ECF No. 45).

11. Initially, Plaintiff mischaracterizes his filing as a "Joint" motion because the original

Motion to Transfer was denied as moot, after Plaintiff voluntarily withdrew his Complaint. (ECF No. 19). As such, at the time his “Joint” Motion was filed, there was no Motion to Transfer pending before this Court.

12. Secondly, as explained above, this Court provided Defendants with an opportunity to file a Motion to Transfer after the case was re-opened. A decision was made not to refile the Motion, and instead, proceed with the litigation before this Court.

WHEREFORE, it is respectfully requested that this Honorable Court deny Plaintiff’s Motion, filed at ECF No. 45.

Respectfully submitted,

By: /s/ Yana L. Warshafsky
Yana L. Warshafsky
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Pennsylvania Department of Corrections
Office of Chief Counsel
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Mechanicsburg, PA 17050
717-728-7763

Date: January 18, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **RESPONSE TO PLAINTIFF'S MOTION** was electronically filed with the Court and served upon the following via first-class mail:

**Smart Communications/PADOC
PATRICK STOLLAR, HM 3365
SCI Phoenix
PO Box 33028
St Petersburg, FL 33733**

/s/ Yana L. Warshafsky
Yana L. Warshafsky
Assistant Counsel

Date: January 18, 2023